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DECISIONS
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Hon. James Jack
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THE SUPREME COURT.

DECISIONS RENDERED TUESDAY, JANUARY 20, 1886.

Hon. James Jackson, Chief Justice; Hon. Samuel Hall and Mr. Blandford, Justices-Reporters for the Constitution by J. H. Lane, Jr., Reporter.

Baker & Co. vs. Burdage. Injunction, from Charleston. Term. Injunction. Amendment. (Before Judge Merriam.)

Johnson, C. J.—A bill was filed to enjoin a trespass on land. Both parties have boxed trees on the land for the purpose of manufacturing turpentine. The defendant claims to be in possession of the land, and the plaintiff claims to be in possession of the land. The court found in favor of the plaintiff, and granted the injunction.

Spencer B. Atkinson, for plaintiff in error. Frank H. Harris, for defendant in error.

Roberts vs. Savannah, Florida and Western Railway. Trovers, from City Court of Savannah. Title. Sales. Turpentine. Words and Phrases. (Before Judge Harris.)

Johnson, C. J.—Section 1293 of the Code, which provides that "cotton, corn, rice, or other products sold by planters and commission merchants on cash sale, shall not be considered as the property of the buyer, until fully paid for, although it may have been delivered into the possession of the buyer," does not include turpentine and resin, so as to prevent the plaintiff from recovering the value of the turpentine and resin sold to the defendant.

Lawton & Cunningham; Garrard & Meldrum; Denmark & Adams, for plaintiff in error. Chisholm & Erwin; Geo. A. Mercer, for defendant in error.

Doering vs. Nelson. Injunction, from Glynn. Witness. Evidence. Injunction. (Before Judge Adams.)

Johnson, C. J.—Where an affidavit of illegality was introduced to the levy of a fine, on the ground that it had been paid, the defendant in a fine was not a competent witness to prove that the fine had been paid. The court found in favor of the plaintiff, and granted the injunction.

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party tendering it; or, if the judge does what is equivalent to refusing to certify, or, in default thereof, fail to return the bill of exceptions with his objections noted, so that they may be removed or corrected, the law provides a remedy by application to this court for mandamus. Code, § 4297.

Writ of error dismissed. T. H. Potter, for plaintiff in error. D. R. Groover; Lester & Ravenel, for defendant.

Nixon vs. State. Keeping open Tippling House on Sunday, from City Court of Savannah. Criminal Law. Tippling House. (Before Judge Harris.)

Johnson, C. J.—The verdict is sustained by the evidence, and is not contrary to law or the rights of the parties.

2. Proof that a defendant was the proprietor of a tippling house, and that it was kept open on Sunday, is sufficient to show that he is guilty of the crime of keeping it open, unless he shows by some testimony that he did not know it was kept open, and a charge to that effect was not erroneous.

(a) The court instructed the jury that they could believe the defendant's statement in preference to the testimony of witnesses, if they saw it and did not change so as to make the jury exclude the statement from their consideration.

3. Although a part taken out of a paragraph of the charge, when standing alone, may appear subject to criticism, yet if as in this case when taken in connection with the balance of the paragraph it is not exceptionable; it will not cause a reversal.

The entire charge is unexceptionable and gave full benefit of the doctrine of reasonable doubts to the defendant and reiterated that knowledge on her part was necessary. The evidence was conflicting and the verdict was sustained thereby.

Garrard & Meldrum, for plaintiff in error. F. G. Dubignon, solicitor general, by brief, for the state.

Walker vs. Vale Royal Manufacturing Co. Case, from City Court of Savannah. Charge. Court. Contracts. Principal and Agent. (Before Judge Harris.)

Johnson, C. J.—It is only when there is no evidence of a vital controlling link in the chain of facts necessary to make out the plaintiff's case, that a direction by the judge to the jury to find for the defendant is permissible. But where a suit was brought for a breach of a contract alleged to have been made by an agent, and there was no proof whatever of the agent's authority, such a charge will not require a reversal.

2. The fact that the person alleged to have been the agent of the defendant at the time of the original contract, but who had since been discharged, was subsequently the superintendent of the defendant company, and that the plaintiff was employed under him by the day, subject to be discharged, at the option of the defendant, was not sufficient to establish a contract of permanent employment claimed to have been formerly made by the agent and for a higher price. Hobby vs. Alford. (See note 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

the fi. fa. issued under the judgment was made on the property of the defendant, parties as to whom service appeared on the papers, and as to whom service was not made, the court was not bound to set aside the judgment.

Held that the facts were sufficient to authorize a conclusion that both members of the firm were served, and a dismissal of the levy for want of service was error.

5. Although the levy in this case does not state that it was made on property as the property of one of the two defendants in fi. fa., yet where the claimant so recognized it in the affidavit, this was a solemn admission in judgment under oath and estops the claimant from denying that it was levied on as the property of one of the defendants.

Judgment reversed. Nicholls & Brantley; Simon W. Hitch, by Pat. Calhoun; King & Spalding, for plaintiff in error. Frank H. Harris, for defendant.

Smith vs. Smith. Probate, from Jefferson. Verdict. New Trial. Charge of Court. (Before Judge Harris.)

Johnson, C. J.—The verdict is sustained by the evidence, and is not contrary to law or the rights of the parties.

2. Where a bill makes one case, and the facts offered to sustain it make another and widely different case, so that there is no correspondence between the allegations and the evidence, but a variance, if not a direct repugnance, the bill will be dismissed on motion.

Judgment affirmed. J. W. Lindsey; E. F. Best; Gustin & Hall, for plaintiff in error. Billups & Hardeman; J. G. Ockington, for defendant.

McMichael vs. Pye et al. Partition of land, from Jasper. Wills. Estates. (Before Judge Lawson.)

Hall, J.—1. By his will the testator bequeathed to his wife a large number of slaves, his plantation stock, farming tools and utensils, household and kitchen furniture, horses, mules, cattle, and all of which property she was to have during her natural life widowhood, and which, in the event of her intermarriage, was to be equally divided between the children of her first marriage.

2. The testator's will was not valid, because it was not executed in accordance with the requirements of the law.

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31. The testator's will was not valid, because it was not executed in accordance with the requirements of the law.

THE ORIGINAL MIKADO.

Play Last Night.
In many respects the Mikado which was

presented to a fair audience at Delvies last night, was the best performance of that popular comedy-opera which has yet been given in Atlanta. The same thing has been given in Atlanta several times this season, and had it not been for the fact that

houses in it, a much larger audience would have been present last night. The two main presentations in Atlanta none have been more heartily enjoyed than that of the company which appeared last night. The management of clever John Templeton, includes in the cast several of the original artists who first produced the play. The play is, identically the same, still the conception of this company is decidedly distinctive, and the acting is of a high order. The same familiar company which has been this way, the scenery is an improvement, and the costuming, which has been made a feature, is magnificently done. William H. Seymour is an ideal Ko-Ko, and keeps the house in a roar of laughter. He throws in a few songs, and a few dances, and a few good acting that stamps him as a thorough artist in his difficult line. The Nanki-Poo of Jay is a very good thing, and the voice of this well known tenor, while the "Tosh-Bah" of George Broderick is simply perfect. The songs of this company are of a high order, and this of this strange character were never presented to more advantage than by Mr. Broderick, who is a very good singer. The "Tosh-Bah" of Jay is a very good thing, who is the original "Mikado" in this coun-

ated Atlanta. His conception of the character displayed an originality which was highly entertaining. The Fish-Tush of William Gibson was another success.

The remainder of the cast is very strong, the Yum Yum of Miss Lucille Meridith being particularly good. Northern critics style Miss Meridith as "the little woman with the big voice." In both respects she is correct. Her voice is a powerful asset. Emma, Mabella Baker is the original Katisha and none have since improved on her interpretation of the character. Misses Hattie Starr and Edna Rough acquitted themselves splendidly in the tricky characters of Pittsburg and Peepoo.

take advantage of this engagement and see it at the matinee to-day or to-night. Even those who have seen it would enjoy the rendition given by this company, which is certainly one of the strongest Mikado companies in this country.

JANISH, THE ACTRESS.

An Interesting Sketch of the Distinguished

Actress

Eighteen years ago there appeared for the first time on the stage of the great Burgtheater in Vienna, a theatre which is to Germany what the Opéra Française is to France, a young girl not more than fifteen years of age, the daughter of humble parents. For a moment the audience sat spell-bound at the charming, blushing picture before them, and then, before the debutante had spoken one word, broke into a perfect storm of applause. That night Vienna had a new sensation, the people at the clubs, cafes and in society were wild. Next morning the young Hungarian girl who found herself famous as Jewish, the famous inmate of the Austrian Emperor's own theatre, from that time her life has been a romance of the strangest, wildest, most fantastic character. Adored

After her success in Vienna, Janish went for some years to the Royal theatre in Berlin, where she won new triumphs and received the personal congratulations of the emperor, with whom she was

days a pleasant surprise. The retired postman, who lives at 1001 W. 12th, where he held an undisputed position. It was during this period that the young Countess, now, a member of one of the laughtiest and most distinguished families in the city, won her heart and made her his wife. The whole town turned out to their wedding, which was the event of the hour. Two years ago Janish was married to his country, including the Christiana Nelson, who is an enthusiastic lover of America.

Everywhere the press and public have acknowledged the merits of the marvelous singing manner and her high qualifications as an actress. Mr. Leon Meyer business manager of Janish in the city in advance of the company. Mr. Meyer also has the position of general in the city of the company. The company in the city of the company. The company in the city of the company.

They Ask for Time.
BERLIN, January 26.—The German Americans on the island of Joehr, whose expulsion from Germany was recently ordered, have petitioned the government to allow them to remain until April 1st, next.

Katie Putnam's Engagement.

Advance Agent Ferris and Press Agent Ike Brannan, of the Katie Putnam combination, were in the city yesterday, arranging for the appearance of this well known actress in this city on Friday and Saturday next. It is a fact now generally admitted that to Mr. Brannan President Cleveland owes his election. There is not the slightest

But as to the which may be read with surprise by some, but which becomes perfectly clear when the fact is recalled that it was Mr. Brannan who sent the Candidate Cleveland the rabbit's foot from Ennola, the efficacy of which was afterwards acknowledged in a personal letter by the president. Mr. Brannan is well known in Atlanta, where he served for some time, in journalism, afterwards

ing to Euflaula, where he embarked on the same business on his own hook. He had been with Katie Putnam several years before, and so well was he liked by the management that he was again offered the same old position in which he is now engaged. His Miss Putnam engagement, which will consist of Friday and Saturday night performances and Saturday matinee, will be one of the most notable of the season. She is a great favorite here, and will undoubtedly play to crowded houses.

Funeral Notice.
COCHRAN.—The friends and acquaintances of
Mr. and Mrs. H. B. Cochran, Mr. and Mrs. Dr. J. F.
Hammond, are invited to attend the funeral of Mr.
H. B. Cochran, from residence, 167 Decatur street,
day at ten o'clock a. m. Burial at Oakland cem-
etry.

Taylor, Wylie & Bailey.
Metropolitan undertakers and funeral directors
embalming and preserving a specialty, No. 26 W.
Alabama street. Telephone, 719. 6mo.

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Scalds, Ulcers, Bone Sores, Ulcers, Sores, Scabs, Erys,
Rings, Thorns, Embroidered Sores, Nostrils, Rheumatism,
Itching Piles. Has never failed to give
prompt relief. Will cure Anal Closes, Abscess,
Fistula, Tetter, Sub Rhum, Barber's Itch, Ring-
worms, Pimples, Sores and Bells. Price 50 cts.

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of the Tobacco Cure. For Headaches, other Aches and Pains, it is invaluable. Price 15 cts.

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hood, etc. I will send a valuable treatise (valued at \$1.00) containing full particulars for home cure, free of charge. Address Prof. F. C. FOWLER, Madison, Wis.

This Powder never varies. A marvel of strength and wholesomeness. More than the ordinary kind, and cannot be imitated with the multitude of low quality reagents or phosphate powders. Sold by ROYAL BAKING POWDER CO., Ltd., New York.

Amusements.

Opera House.

A Great Fashionable Event
The Comic Opera Craze! The Original
MIKADO,
With the principal artists who first produced the
opera in New York city.
THE STAR CAST!
COMPLETE CHORUS!
ELEGANT JAPANESE COSTUMES!
Stage settings and genuine stage business.
Usual prices. Reserved seats at Wilson & Bruce
n^o. 2.
See notices of this great attraction.
Jan 24-31 1911

Friday Night, } LENA, THE MADCAP
Saturday Matinee } LITTLE BAREFOOT
Saturday Night, } OLD CURIOSITY SHOP

Admission as usual. Reserved seats at Wilson
Bruckner's.

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WATCHES,
ART GOODS
J. P. STEVENS,
Jeweler

Jeweler,
47 Whitehall Street
ENVOIOUS SOULS

NO CURE ! NO PAY !

THE "KING BEE" OF A MO

NOPOLY ASPIRING CO.

Said that the people, after being cured, would do

But pinning our faith to the universal honesty of manhood and womanhood, with an abiding faith in our oft-proved remedy, we continued to float our banner with "No Cure! No Pay!" thereon, with unprecedented results.

Pioneer Blood Renewer[®] to refund the money if it does not cure all Blood and Skin Diseases, Rheumatism, Blood Poison, Glandular swellings, scrofula, Malaria and Female complaints.

A PERFECT SPRING MEDICINE

Essay on blood and skin diseases mailed free.

MACON MEDICINE CO

MACON, GA.



ATLANTA, GA.

VOL. XVII
SILLY
THIS EFFORT TO
HOUSE
The Maine Congress
Privileges, Under the
Of the House
Speaker Says
WASHINGTON, Jan.
The senate resolution
"motion of Mr. H.
Hollman gave notice
would ask the house
ention.
Mr. Duntelle, of
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the bill declaring
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This bill is ident-
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road, of Mississippi
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The debate con-
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the property of ex-
Island road from
Mr. Val
strongly advo-
and stated the
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road may be com-
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Adjourned.
NICHES
A Motion to Call
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Resolutions O
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